

No. 4:09-CR-75-D-1  
No. 4:16-CV-131-D

**Respondent.**

On May 17, 2010, pursuant to a plea agreement, Jeffrey Lee McCotter (“McCotter”) pleaded guilty to conspiracy to distribute with intent to distribute more than 5 kilograms of cocaine and more than 50 grams of cocaine base (crack). See [D.E. 105, 106]. On April 4, 2011, the court held McCotter’s sentencing hearing. See Sentencing Tr. [D.E. 161]. At the hearing, the court adopted the facts set forth in the Presentence Investigation Report and ruled on McCotter’s objections. See Fed. R. Crim. P. 32(i)(3)(A)-(B); Sentencing Tr. 6–52. The court calculated McCotter’s total offense level to be 42, his criminal history category to be VI, and his advisory guideline range to be 360 months’ imprisonment to life imprisonment. See Sentencing Tr. at 52–53. After thoroughly considering all relevant factors under 18 U.S.C. § 3553(a), the court sentenced McCotter to 480 months’ imprisonment and ten years’ supervised release. See id. at 56–64. On October 10, 2011, the United States Court of Appeals for the Fourth Circuit granted McCotter’s motion to dismiss and dismissed McCotter’s appeal. See [D.E. 165]. On June 11, 2013, this court reduced McCotter’s sentence to 360 months’ imprisonment. See [D.E. 185].

On June 23, 2016, McCotter moved for a sentence reduction under 28 U.S.C. § 2255 and Johnson v. United States, 135 S. Ct. 2551( 2015). See [D.E. 252]. This court placed the motion in abeyance pending the Supreme Court's decision in Beckles v. United States. See [D.E. 257].

On March 6, 2017, the Supreme Court decided Beckles. Thus, the court lifts the stay. Although the Fourth Circuit authorized McCotter to file a second 2255 motion [D.E. 251], McCotter cannot use Johnson retroactively to challenge his advisory guideline range. See, e.g., Beckles v. United States, 137 S. Ct. 886, 895–97 (2017); United States v. Mack, 855 F.3d 581, 584–85 (4th Cir. 2017); United States v. Lee, 855 F.3d 244, 246–47 (4th Cir. 2017). Thus, Johnson provides no relief.

After reviewing the claim presented in McCotter's motion, the court finds that reasonable jurists would not find the court's treatment of McCotter's claim debatable or wrong and that the claim does not deserve encouragement to proceed any further. Accordingly, the court denies a certificate of appealability. See 28 U.S.C. § 2253(c); Miller-El v. Cockrell, 537 U.S. 322, 336–38 (2003); Slack v. McDaniel, 529 U.S. 473, 484 (2000).

In sum, the court GRANTS the government's motion to lift stay [D.E. 261], DISMISSES McCotter's motion to vacate [D.E. 252], and DENIES a certificate of appealability.

SO ORDERED. This 22 day of June 2017.

  
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JAMES C. DEVER III  
Chief United States District Judge